

The Honorable Jamal N. Whitehead

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

IN RE:

Gary Rosenthal

Debtor.

Gary Rosenthal,

*Plaintiff,*

v.

NewRez, LLC, d/b/a Shellpoint Mortgage  
Services, LLC, Buda Hill, LLC, and Eastside  
Funding, LLC,

*Defendants.*

Dist. Ct. Case No. 2:25-cv-00828-JNW

Bk Case No. 24-12397 - CMA

Adv. Case No. 25-01010-CMA

WAW internal appeal No. 25-S005

APPELLANT'S UNOPPOSED  
STIPULATED MOTION AND  
ORDER FOR LEAVE TO FILE  
OPENING BRIEF OUT OF TIME

NOTED FOR HEARING ON  
JULY 2, 2025

APPELLANT'S UNOPPOSED  
STIPULATED MOTION TO FILE  
OPENING BRIEF OUT OF TIME

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Appellant Gary Rosenthal, by and through counsel, respectfully moves this Court for an order granting leave to file the accompanying Opening Brief out of time. The brief was filed via the Court's CM/ECF system on July 2, 2025, at 3:22 a.m., approximately three hours and twenty-two minutes after the filing deadline, as a result of excusable neglect.

This motion is based on the accompanying Declaration of Christina Henry, the memorandum of points and authorities below, the records and files in this case, and any argument permitted by the Court.

## **I. INTRODUCTION**

Counsel for Appellant inadvertently filed the Opening Brief in this matter approximately three hours past the deadline of July 1, 2025. As detailed in the attached declaration, this minor delay was the direct result of an unforeseen and urgent personal matter that required counsel's immediate attention on the day of the filing deadline, preventing the timely finalization of the brief.

The delay was not the product of bad faith or a lack of diligence. Given that the delay was exceptionally short and caused no prejudice whatsoever to the opposing party, the liberal standard for excusable neglect in this Circuit is met. Appellant respectfully requests that the Court accept the brief as timely filed.

## **II. CERTIFICATION OF MEET AND CONFER**

On July 2, 2025, at 5:43 a.m., Counsel for the Appellant emailed the attorneys for the Appellees in this case with a copy of this motion and the supporting declaration asking if they had any objection to the request and if so if they would agree to meet and confer regarding the matter. All opposing counsel have communicated that they have no objection to this motion.

## **III. ARGUMENT**

A court may permit an act to be done after its deadline has expired if the party's failure to act was the result of "excusable neglect." Fed. R. App. P. 26(b)(1). The Ninth Circuit applies the four-factor equitable balancing test from *Pioneer Investment Services Co. v. Brunswick*

1 *Associates Ltd. Partnership*, 507 U.S. 380, 395 (1993): (1) the danger of prejudice to the  
 2 opposing party; (2) the length of the delay and its impact on the proceedings; (3) the reason for  
 3 the delay; and (4) the movant’s good faith. *See Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir.  
 4 2004) (en banc). Here, all four factors weigh decisively in favor of granting relief.

5 **A. The Trivial Delay Caused No Prejudice and Had No Impact on the**  
 6 **Proceedings.**

7 The first two *Pioneer* factors are dispositive. A delay of just over three hours in filing a  
 8 brief is de minimis. It does not shorten Appellees’ time to respond, disrupt the Court’s schedule,  
 9 or otherwise affect the orderly administration of this appeal. Where delay is short and prejudice  
 10 is nonexistent, the Ninth Circuit strongly favors resolving cases on their merits. *See Ahanchian*  
 11 *v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1262 (9th Cir. 2010) (finding a three-day delay caused  
 12 no prejudice); *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1225 (9th Cir. 2000).

13 **B. The Delay Was Caused by an Inadvertent and Unforeseen Disruption, and**  
 14 **Counsel Acted in Good Faith.**

15 The remaining *Pioneer* factors also support this motion. The Ninth Circuit has adopted a  
 16 liberal interpretation of “excusable neglect,” recognizing it can encompass “omissions caused  
 17 by carelessness,” *Pincay*, 389 F.3d at 859, as well as delays caused by unexpected professional  
 18 or personal disruptions. In *Ahanchian*, this Court held that “unexpected personal problems”  
 19 preventing counsel from meeting a deadline can constitute a valid reason for delay. 624 F.3d at  
 20 1262.

21 As explained in counsel’s declaration, the brief could not be timely filed because of an  
 22 urgent and unavoidable personal matter requiring her immediate attention for a significant  
 23 portion of the filing day. This unforeseen event directly impacted the final, critical tasks of  
 24 preparing the brief for filing, including compiling the Excerpts of Record and finalizing tables.  
 25 Counsel worked diligently to complete these tasks and filed the brief as soon as it was possible  
 26 to do so, demonstrating good faith. The circumstances reflect a minor, excusable disruption, not  
 27

1 a willful disregard of the Court's rules. *See Briones v. Riviera Hotel & Casino*, 116 F.3d 379,  
2 382 (9th Cir. 1997).

3 **II. CONCLUSION**

4 Because the brief delay in filing was the result of excusable neglect, caused no  
5 prejudice, and had no impact on these proceedings, Appellant Gary Rosenthal respectfully  
6 requests that the Court grant this motion and order that the Opening Brief filed on July 2, 2025,  
7 be deemed timely.

8 Dated: July 2, 2025

I certify that this memorandum contains 739  
words, in compliance with the Local Court  
Rules.

10  
11 By: /s/ Christina L. Henry

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**ORDER**

After reviewing the unopposed stipulated motion by the Parties for an Order extending the deadlines for the briefing on appeal, and good cause appearing, therefore, it is hereby,

ORDERED that

1. The Motion to File Opening Brief Out of Time is GRANTED, and Appellants' Opening Brief (Dkt No. 26) is deemed timely.



Hon. Jamal N. Whitehead  
United States District Court Judge